



**THE HUMANE SOCIETY
OF THE UNITED STATES**

December 30, 2013

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Via First Class and Electronic Mail

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
hq.foia@epa.gov

**Re: Freedom of Information Act Request; Air Quality Consent
Agreement with Animal Feeding Operations**

Pursuant to the provisions of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, The Humane Society of the United States hereby requests all records, including communications, regarding the involvement, participation, contribution, or other association of the following concentrated animal feeding operation owner and/or operator with any Animal Feeding Operation Consent Agreement and Final Order ("Air Consent Agreement"). *See generally* Animal Feeding Operation Consent Agreement and Final Order, 70 Fed. Reg. 4958 (Jan. 31, 2005); Animal Feeding Operation Consent Agreement and Final Order, 70 Fed. Reg. 44631 (Aug. 3, 2005).

- Seaboard Foods LLC (formerly Seaboard Farms, Inc.)

The term "records" includes, but is not limited to, documents in all forms (including electronic), information, emails, faxes, letters, comments, reports, summaries of telephone conversations, handwritten notes, meeting minutes, or any other materials. In particular, the term as used herein includes, but is not limited to, all documents, summaries, memorandum, contracts, agreements, attachments, supplements, extensions, alterations, amendments, proposals, meeting minutes, communications and any other supporting materials related to the participation of the above-listed owner and/or operator in any Air Consent Agreement.

If you believe any portion or portions of the requested records to be exempt from required disclosure under FOIA, please exercise your discretion in redacting such portion of the materials and disclosing all other relevant, non-exempt materials. For exempted materials, please provide a full or partial denial letter and sufficient information to appeal the denial. At a minimum, please include in this letter basic factual information regarding the denial, including the

originator, date, length, and addresses of the withheld items; all explanations and justifications for the denial, including any direct statutory or regulatory references; and how each exemption applies to the withheld materials. Finally, if any information requested herein was, but is no longer, in EPA's possession or subject to its control, state whether it is (a) missing or lost, (b) has been destroyed, (c) has been transferred voluntarily or involuntarily to others, or (d) otherwise disposed of, and, in each instance, explain the circumstances surrounding and authorization for such disposition of it and state the date or approximate date of it.

Request for a Fee Waiver

Pursuant to federal law, HSUS requests a waiver of all fees incurred as a result of this request for public information. Under federal law, records are to be furnished completely and without charge when "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of government and is not in the commercial interest of the requestor." 5 U.S.C. § 552(a)(4)(A)(iii). As demonstrated below, each of the four factors related to the first fee waiver requirement, as specified in EPA's FOIA regulations at 40 C.F.R. § 2.107(l)(2)(i)-(iv), weigh in favor of granting our fee waiver request. In addition, since the request "is not primarily in the commercial interest of the requester," a 501(c)(3) not-for-profit organization, the second fee waiver requirement is also met here. 40 C.F.R. § 2.107(l)(1).

The requester, HSUS is a 501(c)(3) nonprofit organization with 11 million members and constituents with a mission to "create a humane and sustainable world for all animals, including people, through education [and] advocacy." The HSUS does not have any "commercial interest that would be furthered by the requested disclosure" of information.¹ 40 C.F.R. § 2.107(l)(3)(i). Indeed, Requester's interest in obtaining the requested information is to broaden public understanding regarding EPA's implementation and enforcement of numerous environmental statutes, and the involvement of EPA with certain animal feeding operations under the Agency's Air Consent Agreement.

Factor 1: The Requested Records Concern the Operations or Activities of the Federal Government.

All of the requested information deals with the "operations and activities of the government," because the information sought is focused on activities surrounding the agency's implementation and enforcement of environmental regulations, including the Clean Air Act, the Emergency Planning and Community Right-to-Know Act ("EPCRA"), and the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") as they relate to concentrated animal feeding operations ("CAFOs"). 5 U.S.C. § 552(a)(4)(A)(iii). Thus, the requested information has a "clear and direct" relation to the operations and activities of the government. *Id.*

¹ Indeed, the legislative history of the fee waiver provision reveals that it was added to FOIA "in an attempt to prevent government agencies from using high fees to discourage certain types of requesters, and requests," in particular those from journalists, scholars and nonprofit public interest groups. *See Ettlinger v. FBI*, 596 F. Supp. 867, 872 (D. Mass. 1984).

Factor 2: Disclosure of the Requested Records is Likely to Contribute to Public Understanding of Government Operations or Activities.

Disclosure of the requested records is “likely to contribute” to an “increased public understanding,” of government operations or activities because such disclosure will enable the requester (and, subsequently, the requester’s membership) to substantially understand why and with whom EPA entered into certain Animal Feeding Operation Consent Agreement and Final Orders. 40 C.F.R. § 2.107(l)(2)(ii). The requested records are not otherwise publicly accessible and they clearly show important government operations and activities.

The HSUS, as a 501(c)(3) non-profit organization with 11 million members and constituents, has numerous means (and intentions) to share this information with the public through, at a minimum, its membership outreach tools. For example, the HSUS has developed an easily searchable web site that can be accessed by the public through the World Wide Web (www.humanesociety.org). Reports, comments, action alerts, press releases, and other materials relevant to policies and activities relating to HSUS and animal welfare and environmental issues have been and will continue to be added HSUS’ web site to ensure that interested citizens have around the clock access to information. Through this and other means, the HSUS is well positioned to contribute significantly to the public’s understanding of CAFOs and their effects, specifically the effects of their releases of aerial pollutants, on member communities and the environment.

Factor 3: Disclosure of the Requested Records Will Contribute to the Understanding of a Broad Audience of Persons Interested in EPA’s Implementation and Enforcement of Numerous Environmental Statutes, and Why and With Whom the Government Entered Into Air Consent Agreements.

Disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in” learning about the Government’s efforts to regulate CAFOs under the Clean Air Act, CERCLA, and EPCRA. Specifically, this is because the HSUS, the requesting organization, has long demonstrated an ongoing interest in the conservation, enhancement, and humane treatment of animals, and the preservation of the habitat upon which those animals depend. HSUS’ farm animal welfare campaign is strongly committed to educating the public regarding the pollution from factory farming operations, and helping our member communities mitigate for negative impacts from those pollutants, including through access to information and education. Because of our expertise in this area, HSUS is well-prepared to analyze and evaluate the records we receive pursuant to this request and assess them in the context of the statutory mandates of the Clean Air Act, CERCLA, and EPCRA.

In addition to being able to analyze the information provided, as further discussed above, the HSUS has the “ability and intention to convey this information to the public.” 40 C.F.R. § 2.107(l)(2)(iii). In particular, air pollution releases from industrial farms affect not only wildlife and farm animals, but also the neighbors, independent farmers, and employees of these farms, all of which may be members of the HSUS. HSUS’ members rely on the organization’s website, action alerts, and monthly magazine for information regarding these very human consequences

of animal agriculture and for an understanding of how EPA implements and enforces environmental laws, including the Clean Air Act, EPCRA, and CERCLA.

Factor 4: The Contribution to Public Understanding of Government Operations or Activities Will Be Significant.

The public's understanding of government activities related to EPA's regulation of operations releasing or otherwise emitting air pollutants into the environment and communities, "as compared to the level of public understanding existing prior to disclosure, [will] be enhanced by the disclosure to a significant extent." 40 C.F.R. § 2.107(l)(2)(iv). The public does not otherwise have a means of accessing these records and understanding their significance.

Further, the HSUS also qualifies for the preferred fee status of "representative of the news media." See 5 U.S.C. § 552(A)(ii). The FOIA was amended to include a definition of the term "representative of the news media" that is in line with the previous interpretation applied by the courts. OPEN Government Act of 2007, Pub. L. No. 110-175. See *National Security Archives v. U.S. Dep't of Defense*, 880 F.2d 1381, 1388 (D.C. Cir. 1989). As such, an entity is a "representative of the news media" if it "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii) (2008).

HSUS is unquestionably a "representative of the news media." HSUS has extensive and well-exercised means to investigate and keep the public informed about the operations and activities of the United States government and has invariably done so for many years. HSUS routinely distributes information, press releases, reports, and copies of original documents to members of the media to generate articles. See, e.g., Lawsuit Challenges \$60 Million Federal Payout for "The Other White Meat" Slogan, HSUS (Sept. 24, 2012), at http://www.humanesociety.org/news/press_releases/2012/09/lawsuit_other_white_meat_slogan_092412.html. HSUS also routinely distributes, at no charge, its own information and information obtained from other sources regarding factory farming, its effects on human and environmental health, and animal welfare issues. See *Environmental Impact*, HSUS, <http://www.humanesociety.org/issues/environment/> (last visited Oct.16, 2012). In addition, HSUS' magazine, All Animals, often features articles about the effects of factory farms on the environment. The HSUS's audience includes the public, media, students, scholars, and scientists.

In sum, this request meets the two requirements, including all involved factors, for the reasonable grant of a fee waiver. Therefore, the HSUS asks that any search and duplication fees in this case be waived or reduced. It understands that the first two search hours and first 100 pages of documents are free. In the event that fees are not waived and the request will involve fees that are estimated to exceed fifty dollars (\$50.00), please notify me immediately by telephone or e-mail before the request is processed.

Conclusion

Thank you for your assistance in this matter. Please do not hesitate to contact me at (202) 676-2354 or hconnor@humanesociety.org if you need any further information or require any

clarification regarding this request. Please confirm receipt of and provide response to the above request within a reasonable period of time or, at a minimum, as required by FOIA.

Sincerely,

/s/ Hannah Connor

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